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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 4 (JHR)

5 BEN WERCZBERGER,

6 Sentence

7 Defendant.

8
9 New York, N.Y.
September 10, 2024
10 11:45 a.m.

11 Before:

12 HON. JENNIFER H. REARDEN,

13 U.S. District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 BY: DANIEL HARRIS WOLF
CATHERINE E. GHOSH

18 Assistant United States Attorneys

19 MEISTER SEELIG & FEIN LLP
Attorneys for Defendant

20 BY: HENRY E. MAZUREK
ILANA HARAMITI

21 Also Present:

22 Stephanie McMahon, U.S. Probation

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(Case called)

MR. WOLF: Good morning, your Honor. Daniel Wolf and Catherine Ghosh on behalf of the government. At counsel table, as I understand, invited by the Court, is U.S. Probation Officer, Stephanie McMahon.

THE COURT: Yes. Hello to you all.

MR. MAZUREK: And good morning, your Honor. Henry Mazurek and Ilana Haramati on behalf of Ben Werczberger, who is present before the Court.

THE COURT: Okay. Good morning to you.

Please be seated, everybody. All right. We're here today for sentencing in the United States versus Werczberger.

On April 18, 2024, Mr. Werczberger pleaded guilty pursuant to a plea agreement dated April 13, 2024, to a one-count superseding information S7, charging him with conspiracy to make false statements to a bank in violation of Title 18, United States Code, Section 371.

In preparation for today's proceeding, I have received and reviewed the probation office's revised presentence investigation report dated July 12, 2024, including its recommendation addendum. I've also reviewed the following submissions from the parties: The defendant's sentencing submission dated August 27, 2024, that consist of letters from Mr. Werczberger and letters from his family, community members, and his physician, also the government's sentencing submission

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1 dated September 3, 2024.

2 I want to confirm that the parties have received and
3 reviewed each of these submissions.

4 Mr. Mazurek?

5 MR. MAZUREK: Yes, we have, your Honor, with our
6 client.

7 THE COURT: All right. Mr. Wolf?

8 MR. WOLF: Yes, we have, your Honor.

9 THE COURT: All right. Are there any other
10 submissions that I did not mention?

11 MR. WOLF: We would simply refer the Court to the
12 victim impact statement that was previously submitted by the
13 U.S. Department of Health and Human Services, and that I know
14 the Court has received in connection with other defendants in
15 this case.

16 THE COURT: Yes. Thank you.

17 MR. MAZUREK: And no further submissions other than
18 what your Honor identified from the defense, your Honor.

19 THE COURT: Okay. Thank you.

20 Now, Mr. Werczberger requested to seal certain
21 portions of his submissions, and I believe that those
22 applications were resolved, but is there anything further in
23 that regard that we need to address now?

24 MR. MAZUREK: No, your Honor, not from the defense.

25 THE COURT: All right. All right. Mr. Wolf, I'm

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1 going to just ask this for good measure: So the PSR indicates
2 that the victim of this offense, as you just mentioned, is the
3 Administration for Children and Families, a component of the
4 U.S. Department of Health and Human Services. You can confirm,
5 I assume, that ECF has been notified of its rights under the
6 Crime Victims' Rights Act?

7 MR. WOLF: Yes, your Honor.

8 THE COURT: All right. Thank you.

9 All right. I'm going to turn now to the presentence
10 investigation report. Mr. Mazurek, you have read the report?
11 Yes?

12 MR. MAZUREK: Yes, your Honor. I reviewed with it my
13 client.

14 THE COURT: Okay. And, Mr. Werczberger, you have read
15 the presentence investigation report as well? Is that right?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. And you discussed it with your
18 attorney?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Have you had sufficient time and
21 opportunity to review the report and discuss it with your
22 counsel?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you been able to discuss any errors
25 that you might have seen in the report?

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1 THE DEFENDANT: Yes.

2 THE COURT: Did you discuss with your counsel anything
3 else that you wish him or them to take up with me today at
4 sentencing?

5 THE DEFENDANT: Yes. We discussed it.

6 THE COURT: All right. Mr. Wolf, you have also
7 reviewed the presentence investigation report, correct?

8 MR. WOLF: Yes, your Honor.

9 THE COURT: All right. Before I turn to the
10 calculation of the sentencing guidelines, I just want to
11 discuss the factual and overall accuracy of the PSR. Now, I
12 did review the objections reflected in the addendum and I
13 reviewed probation's responses to those objections and I find
14 them to be appropriate. I also want to point out that there is
15 a statement on page 33 of the PSR that is -- that is not
16 correct, and I have confirmed this with probation. In the last
17 paragraph on page 33 it says: As such, in taking all factors
18 into consideration, we maintain that a sentence of time served,
19 a variance below the prescribed advisory guidelines range is
20 appropriate in this case pursuant to the factors outlined in
21 18, U.S.C., 3553(a). The language of variance below the
22 prescribed advisory guidelines range is incorrect. I'm going
23 to strike it.

24 And, Officer McMahon, I would ask that probation issue
25 a corrected version of PSR, omitting that language.

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1 MR. MAZUREK: Thank you, your Honor.

2 MS. McMAHON: Yes.

3 THE COURT: All right. Mr. Mazurek, I saw your
4 footnote in your submission going to this point, but I want to
5 confirm it's your view that the PSR is factually accurate?

6 MR. MAZUREK: Yes, your Honor.

7 THE COURT: All right. And, Mr. Wolf, does the
8 government have any objections? Or do you believe the PSR to
9 be factually accurate?

10 MR. WOLF: We do believe it to be factually accurate.

11 THE COURT: All right. Aside from the revision that
12 we just discussed, and that will be made in the report, I'm
13 going to adopt the factual recitation set forth in the
14 presentence investigation report including the changes that
15 probation incorporated into the report reflected in the
16 addendum, the presentence investigation report will be made
17 part of the record in this matter, it will be placed under
18 seal. If an appeal is taken, counsel on appeal may have access
19 to the sealed report without further application to the Court.

20 I am now going to turn to the calculation of the U.S.
21 sentencing guidelines in this case. I am not bound by the
22 guidelines, that is to say, they are advisory, but I do have to
23 accurately calculate the guidelines range and consider what the
24 guidelines recommend before imposing an appropriate sentence.
25 As an initial matter, I note that the November 2023 United

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1 States sentencing guidelines control.

2 The parties' plea agreement calculated a total offense
3 level of 6. Probation, however, calculated a total offense
4 level of 8. In the government's submission the government
5 acknowledges that probation correctly calculated a total
6 offense level of 8, rather than, as the parties did in the plea
7 agreement and an offense level of 6. The dispute concerns
8 2B1.1(b) (9) (A) of the guidelines which provides that if the
9 offense involved a misrepresentation that the defendant was
10 acting on behalf of a charitable, educational, religious, or
11 political organization, or a government agency, it increased by
12 two levels, if the resulting offense level was less than a
13 level 10, it increased to level 10. Here I find that this
14 factor is met. Accordingly, the Court agrees with probation
15 that the total offense level is 8. I note, however, as
16 probation observed, that despite the difference between the
17 offense level reflected in the plea agreement and that set
18 forth in the PSR, each yields a guidelines range of 0 is six
19 months' imprisonment. I also note the government's statement
20 that it stands by the stipulated guidelines calculation
21 reflected in the plea agreement and further that the different
22 offense level calculations do not impact the custodial
23 guidelines range in any event.

24 As stated, I have calculated an offense level of 8. I
25 have also calculated a criminal history category of I. This

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1 yields a guidelines range of zero to six months' imprisonment,
2 a supervised release range of one to three years, and a fine
3 range of \$2,000 to \$20,000.

4 The plea agreement incorrectly states, based on
5 erroneous calculation of a guidelines level of 6 that the fine
6 range is \$1,000 to \$9,500, as opposed to a range of \$2,000 to
7 \$20,000. The government, nevertheless, seeks a fine of \$9,500
8 consistent with what's in the plea agreement.

9 In the plea agreement, both parties agreed not to seek
10 a departure from the guidelines range; is that correct?

11 MR. WOLF: That's correct.

12 MR. MAZUREK: Yes, your Honor.

13 THE COURT: I've, nevertheless, considered whether
14 there is any basis for departure, and find that there are no
15 grounds justifying a departure here.

16 With that, I'll turn first to counsel, and then to
17 Mr. Werczberger, if he wishes to say anything.

18 I have read everyone's sentencing submissions, and you
19 need not repeat anything that you've included in those papers,
20 but, of course, you're welcome to tell me whatever you'd like
21 me to hear today.

22 So I'll start with the government.

23 MR. WOLF: Yes, your Honor. I won't repeat what's in
24 our sentencing submissions, I'll just short of briefly
25 emphasize a few things.

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1 The first is I think what's acknowledged in the PSR as
2 well as, I think at least acknowledged, if not expressly in the
3 defendant's submission, and that is that this particular
4 defendant, at least as noted in the PSR, I think it's described
5 as a happy childhood, a middle-class upbringing with all the
6 basic necessities. As the sentencing submission notes, the
7 defendant is an extremely successful businessman. He's the
8 patriarch of his family. He has a net worth of millions and
9 millions of dollars.

10 I raise all of these to illustrate the point that the
11 defendant here engaged in conduct not because of financial
12 need, as the Court sometimes sees when sentencing defendants,
13 not because of difficult family circumstances, as the Court
14 sometimes sees, and not because he was placed in a difficult
15 position where, at first he may have not understood when he had
16 gotten into and then quickly and slowly realized and simply
17 couldn't get out. To the contrary, from the government's view,
18 this is a crime of greed and a crime of a defendant believing
19 that the rules that applied to everyone else do not apply to
20 him. It is a crime a conduct calculating to view government
21 funded childcare as a means to profit, and in particular a
22 means to profit without regard to following the rules, without
23 regard as a board member of a head-start agency entrusted to
24 guard against waste, fraud and abuse, without regard to
25 ensuring that services are being delivered and without regard,

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1 I would note, for who else might suffer or be affected
2 negatively for the conduct. And here I will note, that as part
3 of the defendant's conduct, it's not part of the offense
4 conduct, it's not part of the lies that were told to the bank
5 but part of the facts and circumstances relevant to the offense
6 that the defendant swept in his wife and grandson in this
7 conduct, which, in the government's view, is further evidence
8 of the defendant having taken a reckless approach. And one,
9 again, that viewed himself on different footing than others.

10 All of this is very concerning to the government and
11 worthy of just punishment. There's a need for the sentence
12 imposed to reflect the history and characteristics of the
13 defendant that I just raised to reflect that the defendant knew
14 better and that his crime was committed without, as I said,
15 regard for the rules. His crime was committed in a manner that
16 it was simply okay to lie to a bank in order to obtain a bank
17 account.

18 There is a need for general deterrence. There is a
19 need to promote general deterrence so that the broader of
20 community of would-be or current members of head-start boards
21 know that consequences will follow if they abdicate their
22 responsibilities.

23 And there's a need to promote specific deterrence to
24 ensure that this particular defendant will not be tempted to
25 reoffend.

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1 As I said before, from the government's perspective,
2 there really is a need here to promote respect for the law, a
3 need to promote the notion that all defendants, no matter their
4 socioeconomic status will be treated equally before this Court
5 and all other Courts.

6 The government has taken into account all of the
7 3553(a) factors in coming up with its recommendation. We have
8 recommended, we agree with probation that this defendant need
9 not be incarcerated. However, we do take the view that in
10 service of all of the 3553(a) factors that some period of home
11 detention is appropriate. We have recommended six months of
12 home detention as well as a fine at the top of the parties'
13 stipulated guidelines range.

14 Unless the Court has further questions, the government
15 respectfully refers to our papers.

16 THE COURT: All right. Thank you, Mr. Wolf.

17 Mr. Mazurek?

18 MR. MAZUREK: Yes, Judge, we have -- we're going to
19 bifurcate our presentation. Ms. Haramati is going to speak on
20 the issue of the nature and personal characteristics of the
21 defendant and I'll speak on the remainder of the 3553(a)
22 factors, if that's okay with the Court.

23 THE COURT: Yes. Very good.

24 MS. HARAMATI: Thank you, Judge. If it's okay with
25 the Court, I'm going to just go to the podium.

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1 THE COURT: Sure.

2 MS. HARAMATI: All right. Thank you, Judge. As
3 Mr. Mazurek said, I'll be addressing the personal history and
4 characteristics of Mr. Werczberger, which really provides an
5 anchor for all federal sentencing. You know, the sentencing
6 statute, as the Court knows, of course, better than I do,
7 directs the Court to impose a sentence that is sufficient but
8 not greater than necessary, and that, of course, means
9 sufficient but not greater than necessary, not just for the
10 crime, not just for the offense conduct, but for the person.

11 So the salient question for the Court today is not
12 just the contours of the conduct that Mr. Wolf addressed and
13 that Mr. Mazurek is going to address, but -- and it's not just
14 even the sentencing guidelines, but the question is who is Ben
15 Werczberger. He's a superlative person looking beyond this
16 offense conduct. The government mentioned Mr. Werczberger's
17 success and his family. His success and his beautiful family,
18 many of whom are here today, his -- all three of his children,
19 Jacob, Pessi, and Esther are here, as well as their spouses,
20 his wife, Miriam, and literally dozens of grandchildren and
21 their spouses are here to support Mr. Werczberger, and that --
22 what he has been built, both in his business success, which
23 I'll address, and his family, is his own merit, it's through
24 his own hard work.

25 I know the Court carefully reviewed all of our

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1 submissions and the letters, so I won't rehash that, but I've
2 gotten to know Mr. Werczberger pretty well over the last almost
3 two years. So there are a couple of things that I just want to
4 highlight for the Court in crafting a sentence of what is
5 sufficient but not greater than necessary for him and why a
6 period of home detention, we submit, is greater than necessary
7 for this -- for this person.

8 There are three attributes that I think really capture
9 Mr. Werczberger's true essence: It's his grit and his
10 commitment to hard work. He has a heart for charity and
11 community service throughout his life. And he has an unmatched
12 dedication to his family, which is his first priority. It's
13 his pride and it's his joy. That package of attributes and the
14 positive impact that Mr. Werczberger has had on those around
15 him, his employees, his community members and his family, all
16 support a sentence of time served without any further
17 restrictions on his liberty. This is an extraordinary man who
18 is already going to carry for the rest of his life the
19 indelible burden of his felony conviction.

20 Your Honor, Mr. Werczberger grew up in a home of
21 modest means. It's true he wasn't -- he didn't struggle
22 financially or want for food, but he was a son of two Holocaust
23 survivors who lost everything, and despite that, his parents
24 never gave up. They rebuilt their entire lives from scratch.
25 And Ben learns from his parents' example. He saw that if they

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1 could persevere and overcome the unthinkable horrors and the
2 unimaginable loss that they endured, he can also persevere, and
3 that is exactly what he did when he faced life's challenges.
4 He took inspiration and example from his parents. When Ben was
5 tested as a young man, he had several severe health challenges
6 that put him into significant medical debt that jeopardized the
7 stability of his family when his children were just babies, you
8 know, many would have despaired under those circumstances, but
9 that's not Ben. Ben took on a second job. He walked
10 door-to-door peddling copy supplies and other office supplies
11 and several nights a week he slaved over a hot oven working as
12 a baker. Through his grit and his perseverance Ben regained
13 financial stability to his young family. It was not something
14 that he could take for granted or something that he was born
15 into. And he's taken the lessons of his youth and his parent's
16 house to heart. He imparts them to his grandchildren and
17 hopefully he'll impart them to his great grandchildren when
18 they grow up. Ben's granddaughter, Rachel Dembinsky, I think
19 puts it in an especially nice way, she wrote in her letter that
20 she can see from the twinkle in her grandfather's eye that he's
21 proud of his hard work when he looks back and he recounts those
22 days when he struggled. He's not resting on his laurels. He's
23 using his own struggles as an example.

24 In middle age, after he faced years of financial
25 struggle, Ben built a successful business. He accomplished

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1 that through persistence, through hard work, through
2 creativity, and importantly, he accomplished that through
3 listening to the opinions of his peers, his partners, and his
4 employees.

5 One of -- I want to just note for the Court that one
6 of the letter writers, Herman Goldberger, who is Ben's partner
7 of more than 30 years, is also here before the Court today to
8 support Mr. Werczberger. It was a personal endeavor for him
9 building this business and struggling. About 30 years ago, a
10 little, more Ben found a founded Tiger Supplies. At the time
11 it was a novel idea. It was the first ecommerce business that
12 sold wholesale architectural supplies. And with that good idea
13 and with that persistence, Tiger took off. It has numerous
14 divisions now that sell a pretty surprising array of different
15 kinds of products, professional durable, medical equipment,
16 kitchen cabinet supplies, janitorial supplies, among like --
17 among many others, and Tiger now currently employees
18 approximately 100 employees, all of whom over the decades have
19 looked to Ben for stable jobs and a workplace that cares about
20 them and allows them to thrive, because that's the kind of boss
21 that Ben has been throughout his time.

22 Ben's son, Jacob, who is also here, has seen that
23 firsthand working for his father over the last 30 years. He
24 recounted for the Court in his letter, I just want to
25 highlight, the real humanity that Ben conducted himself with at

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1 work. Jacob writes that Ben never raised his voice at a
2 coworker, a customer, or a vendor, no matter how stressful the
3 day was. Jacob now runs the company because Ben had to step
4 down as part of the consequences of his felony indictment and
5 felony plea, just because of the realities of the business
6 world made it impossible for him to continue running the
7 company with those marks on his record. And Jacob, who is now
8 at the helm, tries to emulate his father. He knows that his
9 father was the go-to guy for the employees because of the
10 person that he is, and Jacob also is striving to be that same
11 kind of boss that he saw his father be over -- over the
12 decades.

13 You know, another aspect of Ben that I think is really
14 a hallmark of who he is, is charitable work and his community
15 service. Throughout his life Ben's record shows that he had an
16 understanding that any success he had was dependent on the
17 support of others in the community. He knows he can't go at it
18 alone, and so he knows that he has to give back because nobody
19 can go at it alone. So Ben has always prioritized charity and
20 community service as part of his very ethos. He has a record
21 of literally decades of assisting those in need financially and
22 beyond financial help, devoting his time, leveraging his
23 connections, and his creativity in order to help organizations
24 and people, not just pay for things, but also run organizations
25 efficiently in order to provide the most good for the most

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1 people. You know, he also showed through his own actions, even
2 when he was a struggling -- struggled financially as a young
3 man that charity begins at home, and for him that wasn't just a
4 mantra or a nice saying to repeat to his children every now and
5 again. It was his reality and his guiding principle.

6 A. I thought that there was one particularly touching story
7 that I would just note for the Court. His daughter, Ben's
8 daughter, Pessi, who is sitting here in the front row, recalls
9 when she was a young girl and when Ben was just a young father,
10 he and his wife opened their home, which was just a few blocks
11 from my Maimonides in Boro Park to members of the community who
12 couldn't make it home when they had a loved one who was
13 hospitalized and members of the Orthodox Jewish community who
14 wanted to stay close by the hospital on shabbos when it was not
15 possible because of the sabbath restrictions for them to travel
16 to and fro to the hospital. They literally had, as a Pessi
17 describes, every week somebody staying in their home, and
18 somebody sharing in the family's sabbath meal, a festive meal,
19 becoming part of the family, every single week. Ben made his
20 charity a reality an example every single day.

21 You know, as part of our sentencing submission, and I
22 won't rehash this, we submitted about half a dozen letters from
23 charitable organizations that Ben has devoted his time and his
24 financial resources to.

25 And, you know, just coming before the Court, I find it

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1 notable that each of these organizations doesn't talk about
2 Ben's recent contributions, Ben's recent activity. They talk
3 about his long-standing activity, his long-standing investment
4 and commitment for their organizations because, you know, Ben
5 is not somebody who just started taking up charitable work when
6 he saw that he was in trouble. He has been doing this his
7 entire life, and he -- for him it is a part of who he is,
8 community service and doing what he can for others.

9 You know, I find, you know, the most touching and most
10 illuminating aspects of Ben's community work to be the personal
11 stories of individual help. There were, I think, dozens of
12 those kinds of stories that his family, his friends, and
13 community wrote about in their letters. They -- his children,
14 his grandchildren wrote about how Ben routinely drops
15 everything whenever he can help, just not just his kids, not
16 just grandkids, not just those closest to him, but his distant
17 family members, his friends of friends, employees, people in
18 the wider community. Ben's grandson, Michael Friedman, who I
19 believe is here today, talks in his letter about how Ben helped
20 Michael's elderly relative. This is Michael -- Michael is Ben's
21 grandson-in-law. So Michael's elderly relative is not really
22 Ben's elderly relative? It is somebody Ben doesn't even know.
23 When this better than person was stuck in Florida during the
24 COVID lockdowns, you know, when the whole world of fearful of
25 when was going to happen next, Ben dropped everything to help

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1 this person who he did not know really. Michael recounts
2 now "Without a second thought, Ben took charge he drove over an
3 hour on several occasions to personally deliver food and
4 whatever else was needed. When Michael's family member ended
5 up in the hospital all alone, Ben was there to make sure he had
6 everything he needs and was well cared for."

7 That story is not unique to Ben. It's just one
8 example of many that highlights who Ben Werczberger is,
9 everyone who wrote the Court had something special to say about
10 Ben's community service.

11 Now, one final example of this that I want to
12 highlight is that tremendous work that Ben and his wife have
13 devoted in transforming their community in Deerfield Beach,
14 Florida, which is a retirement community with mostly senior
15 citizens into a welcoming place where every single one of those
16 senior citizens has a place to go and feels welcomed, no matter
17 who they are. The rabbi of that community of the synagogue
18 who -- he, together with the Werczbergers, runs that community
19 is here today, Rabbi Knobloch.

20 Ben's granddaughter, Shana Dembinsky, who has been to
21 visit, she describes how everybody in the community loves Ben.
22 They don't know everything that he does, they don't know how
23 behind scenes he's working not to make sure that the community
24 has a building or that people -- elderly people have
25 transportation to the synagogue if they can't make it on their

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1 own. But those are things that Ben does without fanfare and
2 without publicity and he does discreetly and they often go
3 unnoticed, but Shana, his granddaughter, sees that this is
4 Ben's very essence, and the community might not know the
5 details because he doesn't publicize his work but they know the
6 kind of work that Ben Werczberger is.

7 Now, a final aspect of Ben that I think is perhaps the
8 most important thing that he has done in his life is his
9 unmatched dedication to his three children, to his wife, to his
10 more than a dozen grandchildren and to his even more great
11 grandchildren. Ben has an unbelievably close relationship with
12 his children and grandchildren, and that's what makes Ben, I
13 think, truly special, truly a unique person. His most
14 essential quality is being the rock of his family, as his
15 daughter Esther Dembinsky, I think, put it, really, really,
16 well. You know, many fathers are committed to their families,
17 but I think that it's rare for a 72-year-old man with
18 middle-aged children, 15 grandchildren, to be the go-to person
19 for literally everybody. But that's Ben. No matter how busy
20 he is, no matter what else he's doing, his children and his
21 grandchildren know that they can count on him to put their
22 needs first. Even during the pendency of this case and how
23 stressful and difficult it's been for him, they have counted on
24 Ben to be there for him first. I think one of his
25 granddaughters put it really well in her letter, Rachel Kraus,

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1 she had that Ben is her 911, 311, and her first phone call in
2 any emergency. That's really an extraordinary thing for a
3 grandchildren to feel close enough with their grandfather for
4 him to be there for their concerns and their needs for Ben to
5 be their first line of moral support.

6 You know, Ben's superlative commitment to his family
7 didn't just start when his responsibilities become lesser, you
8 know, that of a grandfather. They began when he was a young
9 father and when he was struggling to make ends meet, when he
10 had multiple jobs. His kids though, they didn't know anything
11 about any of that because Ben put them first. His daughter,
12 Pessi, talks about how she remembers as a child her father
13 could have the best day or the worst day, but we kids could
14 never tell them apart because he was as joyful on the bad ones
15 with the kids as he was on the good ones. Pessi, I think,
16 really beautifully encapsulates Ben's commitment when she says,
17 my dad dedicates his life to his kids, it doesn't matter what
18 is going on outside of him, if we need him, he is there, along
19 with all of his compassion and all of his grace. You know,
20 there are literally countless stories in those letters about
21 the little things that Ben has done for his grandchildren, how
22 he was there when one was home sick, how he, you know, took the
23 grandchildren for a special -- special occasions, you know,
24 over the summer, and how I think, really, unbelievably, he
25 escorted each and one every one of his grandchildren who was

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1 going to study abroad, he personally took them it study abroad,
2 he took them to the dorm, he bought them their supplies, he was
3 who escorted them into their first step into independence, and,
4 you know, that is the kind of grandfather that he is, a
5 hands-on grandfather who wants to make sure that every single
6 little thing for his grandchildren is going well and is going
7 right.

8 And, you know, I will say, as Ben's wife, Miriam,
9 pointed out in her letter, she says amazingly, you know, what's
10 amazing is not just that the grandfather wants to spend that
11 kind of time with the grandchildren, is that the grandchildren
12 want to spend that kind of time with elderly grandfather when
13 they're, you know, teenagers and budding young adults. Miriam
14 wrote the Court, amazingly, as teenagers and young adults, the
15 grandchildren wanted to make that trip and transition to school
16 and life abroad with their grandfather because that's the kind
17 of close relationship that Ben has invested in every generation
18 of his family, and he has a profound impact on his
19 grandchildren and on his children. His son has taken over his
20 business. And his grandchildren write how his commitment to
21 hard work and his advice in their own career paths when they
22 have struggled in making decisions in their own lives, his
23 advice and his -- his inspiration is there for them.

24 His granddaughter, Riki, who is here, she says that
25 her grandfather's words of advice and encouragement follow me

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1 wherever I go. That is the kind of rare bond that Ben can only
2 have built through time, through investment, and through real
3 care. Few people in this world are as lucky as Ben
4 Werczberger's grandchildren to have the kind of grandfather
5 that he is, who has devoted time, energy, to nurture every
6 single one of them independently like a second father.

7 And this is the testament to Ben as a true patriarch.
8 He's at patriarch because he happens to have many children and
9 grandchildren. He is the real deal. He's a family man. And
10 he has put his money where his mouth is throughout his entire
11 life.

12 You know, as a family man, Ben has naturally, and I
13 think quite painfully, opened up to his family about his guilt
14 and his remorse in this case. He came clean to them about his
15 mistakes as several of his children and friends wrote about in
16 their letters, but, you know, what I think is particularly
17 noteworthy is not just what Ben said to them but it is that
18 because of their close relationship with Ben they can see his
19 remorse expressed without, you know, without him speaking, they
20 see it beyond just his words, that he's taken his criminal
21 conduct seriously and that he's sorry for what he did.

22 These past 18 months, his daughter, Esther, writes,
23 these past 18 months have really taken a toll on Ben. This
24 mistake has been a huge burden to bear and a tremendous source
25 of shame that he's struggling with daily.

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1 And Miriam Werczberger, Ben's wife, who is the closest
2 person to him in this world, she recounts that just knowing
3 that Ben did wrong and the toll it's taken on their children
4 and grandchildren has been immensely hard for Ben. He's always
5 tried to set a good example for them and it pains him deeply
6 knowing that he failed at the most important aspect of his
7 life. Miriam writes, I see the anguish and the fret that
8 plagues Ben when he doesn't know I'm looking.

9 Ben's family has seen for the last two years how he
10 has internalized his crime. And that's the real view of Ben
11 Werczberger. Looking at who Ben is, looking at his life story,
12 pulling himself up and building something successful through
13 his hard work, looking at his dedication to his community and
14 sharing the success that he enjoyed long before this case ever
15 started and looking at his quintessential nature as a family
16 man taken together, I submit, your Honor, that this felony
17 conviction and a time-served sentence without more are
18 sufficient but not greater than necessary for the person who
19 Ben Werczberger really is.

20 And with that, I will turn over the rest of the
21 presentation to Mr. Marks.

22 THE COURT: All right. Thank you, Ms. Haramati.

23 MR. MAZUREK: Judge, I just want to say a few words on
24 the remaining 3553(a) factors and really focus on the
25 differences between the parties in terms of what we are

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1 requesting the Court to do at sentencing.

2 First, I would like to speak on the seriousness of the
3 offense and what Mr. Wolf was talking about the need to promote
4 due respect for the law and just punishment. There is no
5 question, your Honor, that Mr. Werczberger is embarrassed,
6 humiliated, and extremely remorseful for in any way causing the
7 Court, the DHHS, the community, the government, the
8 prosecutor's office to believe that he in any way wished to
9 endanger the welfare of the schools -- of the school that he
10 lent considerable amounts of money to. He is absolutely
11 remorseful for taking what was at the time using extremely bad
12 judgment to take self-help measures to get a direct payment
13 from Project Social Care into a bank account in the New York
14 City and making those false representations to the bank and
15 doing so.

16 He did that, your Honor, but in the -- I think it is
17 important for you to understand the context in which he did.
18 Mr. Werczberger was not in the business of early daycare or
19 childcare at all. That was not his business. His business, as
20 Mr. Haramati spoke of at length, was developing the company as
21 he did for a whole generation, 25 years of wholesale
22 distribution company in different areas. He decided to take
23 the risk that he did, the business risk he did by lending
24 significant money to the New York City Early Learning Company,
25 because he believed in it. He did the diligence. He visited

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1 the school. He saw the facilities. He was impressed by the
2 ratio of day care providers to children. He was impressed with
3 the school facilities for kitchen and providing nourishment for
4 the children. He was impressed with the therapy and medical
5 services that they provided. And for a period of time, he
6 extended large amounts as one of the main creditors to New York
7 City Early Learning. He did that because -- not because he in
8 any way wanted to steal money from the company, he wanted to
9 make -- he wanted to provide money for the company to continue
10 to provide and believed it to be a good and reasonable business
11 risk in doing that.

12 He made a great error in November of 2019, which, you
13 know, he has regretted ever since, and for which he is being
14 rightfully punished today in this courtroom by taking that
15 self-help measure and opening the bank account and taking a
16 check directly in order for repayments of that loan. He did
17 that because he extended -- he went beyond his comfort zone.
18 He went from two and a half to three and a half million and was
19 concerned about repayments. But, your Honor, what
20 Mr. Werczberger wants the Court to know, wants the government
21 to know, and wants his family to know, and he's been trying to
22 explain, he never intended went to do any harm to the school,
23 in fact, the school itself, a for-profit company, showed that
24 it provided quality day care, not just early health care, early
25 head-start kids, but also to a number of other kids from

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1 grades -- three-year-olds all the way up to the
2 five-year-olds. He is very sorry for putting the organization
3 and that head-start program in any theoretical conflict based
4 on the credit that he extended to the school itself.

5 But let me say, your Honor, that with respect to the
6 punishment that is just and requires due respect for the law
7 and for deterrence purposes, I certainly think, you know, with
8 respect to the specific deterrence you have a 72-year-old
9 grandfather, great grandfather, and father, who I don't think
10 there's any concern -- should be any concern that he would ever
11 get close to this kind of conduct ever again. The lesson has
12 been learned and learned considerably. In terms of the
13 punishment and general deterrence, you know there are different
14 defendants who were charged in this case in terms of the level
15 of culpability that the government has already indicated,
16 Mr. Werczberger obtained this plea agreement because they found
17 him to be on the lower end of the culpability scale.

18 Your Honor has already sentenced one other defendant
19 in this scheme, Ms. Wong, and she was convicted also for the
20 same kind of conflict of interest as Mr. Werczberger. She
21 received misdemeanor. And, obviously, there is a very
22 considerable difference between a misdemeanor penalty and a
23 felony conviction.

24 You know, what Mr. Haramati said couldn't be more
25 striking in terms of the fact that one of the traits that

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1 Mr. Werczberger takes so much to heart is his being the rock
2 for his family. He destroyed all of that in the judgments he
3 made in this case. Even Mr. Wolf identified him as the
4 patriarch. One of the things that Mr. Werczberger really
5 always intended was to be that person that could be relied upon
6 for doing not just the right thing financially for the family
7 and building a business from scratch, coming from only a
8 Yeshiva education and no college and no real high school, he
9 wanted to make sure that in addition to providing that kind of
10 stability he also would provide moral judgment stability and he
11 failed them in that regard. It's not just that personal
12 punishment that he faces, but the felony conviction, which, as
13 your Honor knows, unfortunately, in today's society is a
14 scarlet letter that you never -- that never leaves you. Mr.--
15 the collateral consequences of that felony conviction are
16 serious, severe, and practically real. Mr. Werczberger had to
17 give up the company that he ran for over 23 years at the time
18 of his arrest. Why? Because banks found him no longer -- a
19 good credit risk, he was kicked out of banks, mortgages -- the
20 mortgage banks started to foreclose on his properties, he even
21 was losing the full term life insurance policies that he
22 financed for long. So these are real day and actual
23 consequences of a felony conviction. And they should not be
24 taken lightly.

25 The real question, your Honor, I think the only

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1 question that comes -- that the parties diverge on in our
2 aspect of what we believe is a just and reasonable sentence
3 under the Section 3553(a) factors and the clause is any special
4 condition of release. Certainly, we defer to the Court as to
5 whatever financial penalty you think is appropriate in order to
6 give due credit to the Sentencing Reform Act's requirements.
7 The special condition that the government seeks is a six-month
8 home detention period, your Honor, and I believe that that is
9 not necessary given the first one is sufficient but not greater
10 than necessary under that statute.

11 Also, your Honor, in determining special conditions,
12 as indicated in the government's sentencing memo at note 5 on
13 page 9, the Second Circuit has taken a particular interest in
14 sort of defining the contours of the discretion that a
15 sentencing Court should have in determining what is a
16 reasonably related special condition to the nature and
17 circumstances of the offense and the personal history and
18 characteristics of the defendant, and that's in Section 5D1.3
19 of the sentencing guidelines. We believe that this additional
20 deprivation of liberty that the government requests is not
21 reasonably related to these objectives. I think your Honor
22 would be better suited to use the vitality of this 72-year-old
23 great grandfather who has done great things in his life but
24 made really bad judgments with respect to this loan to New York
25 City Early Learning and how he took the self-help measures to

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1 protect himself from that. Your Honor, you can use that
2 vitality and not just say that he should be at home, he
3 would -- he loves to be home with his beautiful wife,
4 obviously, and children and grandchildren but your Honor can
5 add a condition which is more reasonably related to the offense
6 conduct and to this particular defendant, and that is to add a
7 community service obligation and requirement that connects
8 perhaps to the educational industry, for which he was supposed
9 to volunteer and give his good-faith volunteer service as a
10 board member of the head-start program.

11 So for all of those -- for those hours that he may
12 have not provided -- you know created that potential conflict
13 of interest, your Honor can issue a special condition of
14 probation or a supervised release that puts him back into the
15 community to give back. As Ms. Haramati said, Mr. Werczberger,
16 he's 72 years old, he has some health problems, as indicated in
17 the probation report, he's had a hip replacement and he needs
18 to go his knee replaced, but, you know what, what he wants to
19 keep going, but, your Honor, instead of making him stay at home
20 for six months, which can only do, I think, more mental health
21 damage to him, I would ask that the Court consider putting him
22 back out into the community, community service that the
23 probation department can recommend to enable him to give back
24 and do the kind of good things which his entire life has been
25 structured around.

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1 Sometimes good people do bad things, your Honor, and
2 that is what the situation is, I respectfully submit is what
3 happened here to Mr. Werczberger. But, your Honor, he is being
4 punished. No doubt about it. A felony conviction is
5 substantial. All the parties, I think, including the probation
6 department, understand that there is no need to incarcerate
7 Mr. Werczberger for this conduct. That would go beyond what
8 is -- what would be greater than necessary under the Sentencing
9 Reform Act, but if the Court is considering special conditions
10 beyond the standard conditions, we would ask that it tailor
11 that special condition to something that is more apropos to the
12 kind of offense conduct that Mr. Werczberger committed and also
13 is consistent with his personal history and characteristics.

14 Your Honor, with respect to the financial penalty,
15 Mr. Werczberger has been brought a certified check, a bank
16 check, to court. He has a signed a consent order of
17 restitution in the amount of \$177,000 -- \$177,075, which
18 represents every penny of interest that he received from the
19 New York City Early Learning loan that was part of the offense
20 conduct here.

21 I also state just for the record, Mr. Werczberger
22 didn't receive the full repayment of principal from New York
23 City Early Learning. He still had -- so this turns out he did
24 not gain anything financially from this conduct at all, and as
25 I've said, he understands and accepts his responsibility and

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1 his financial penalty is being paid on the very day of
2 sentencing.

3 So, your Honor, with that, I would ask again that the
4 Court consider an alternative to what the government proposes
5 in terms of its special condition of probation. We believe
6 that we -- that the probation department's recommendation not
7 to include such an additional deprivation of liberty should be
8 also given credit by the Court. And so we ask that the Court
9 sentence -- we respectfully submit that the Court sentence
10 Mr. Werczberger to time served two years of supervised release
11 with the special condition of community service as opposed to
12 what we believe would be wasting the assets of Mr. Werczberger
13 in home detention.

14 We thank you.

15 If there are any questions, we are available.

16 THE COURT: Yes, Mr. Mazurek, I have a couple of
17 questions for you. Community service had been on my mind also.
18 However, I -- from the PSR and from the defense's submission,
19 my understanding is that Mr. Werczberger is a very religious
20 person and that he would be observing the sabbath and various
21 holidays throughout the year. Is there a way that community
22 service commitment could work?

23 I'd like to hear from Officer McMahon on that as well.

24 Is there a way that community service requirement
25 could work in a situation where we have a person who, for

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1 religious reasons, needs to be away from that commitment from
2 time to time to carry out his religious obligations?

3 Why don't you speak to that, if you want to,
4 Mr. Mazurek.

5 And I do want to hear from Officer McMahon as well.

6 MR. MAZUREK: Yes, your Honor. Having represented
7 other members, in fact, of this community, I do know that
8 community service is something that -- I mean, there are
9 organizations, one, that can help interface with probation, the
10 Aleph Institute is one, it's A-L-E-P-H, that deals with helping
11 people complete their sentences in probation, supervised
12 release and community service, etc. They can interface to
13 enable, to give enough advance time warnings to the
14 organization or to carve out a schedule to ensure that whatever
15 community service is being provided can be done in a way that's
16 also consistent with his religion obligations and doesn't in
17 any interfere with or make the community service less
18 effective.

19 THE COURT: Okay. Officer McMahon.

20 MS. MCMAHON: We would -- as far as like what the
21 community service would look like, we would defer to the office
22 that would be supervising him, the officer that would be
23 responsible for overseeing his supervision. From our
24 standpoint, if the Court were to impose community service, we
25 would be looking at the number of hours that should be imposed.

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1 And, generally, I believe it's 100 hours per year is like the
2 standard. So, given that, there should be enough flexibility
3 if there was, you know, a holiday or religious observance, it
4 wouldn't be something so onerous, not something he would be
5 doing seven days a week, that that couldn't be worked out.

6 THE COURT: I see.

7 MS. McMAHON: And I'm sure the officer would be
8 looking to match the defendant up with a place that would --
9 you know, where you could utilize his skills, you know, but,
10 again, we would defer to the office that would be supervising
11 him and that officer.

12 THE COURT: All right. Thank you.

13 And, Mr. Mazurek, I also wanted to ask you, you
14 referred to the consent order of restitution, which I do have
15 here, and I will sign on today and put on the docket, but you
16 also said something, I'm paraphrasing now, but something like
17 whatever financial penalty the Court sees fit to impose. Did I
18 have that right? Am I understanding that you do not object to
19 a fine that's higher than \$9,500?

20 MR. MAZUREK: We do not, your Honor. If the Court
21 believes that is necessary in order to satisfy the Sentencing
22 Reform Act, that is correct. And we do, you know, think that
23 that -- again, in asking Court to construct an overall sentence
24 that is not sufficient but greater than necessary as part of
25 the analysis that we ask the Court to consider in -- as opposed

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1 to what the government has requested for purposes of this home
2 detention because we do believe that the home detention is not
3 necessary here, and is not going to fulfill the kinds of
4 factors or be consistent with the factors under 3553(a).

5 And if I didn't say it before, the other thing about
6 home detention, your Honor, is that it doesn't punish
7 Mr. Werczberger as much as it does others. I mean, he has
8 responsibilities to the 15 grandchildren and 17 great
9 grandchildren. He has responsibilities to the -- there are
10 over -- there are about 100 employees of Tiger Supplies, and
11 sometimes his son, who was thrust into this business at the
12 time of Mr. Werczberger's arrest, he needs to be on site to
13 help with the administration of that business, and he also --
14 you know, he's founded a synagogue in Florida that also he's
15 responsible for the operations of.

16 All of these things, you know, I do know that there is
17 a need for the seriousness of this offense to be punished
18 justly, but we just believe that that particular special
19 condition is not necessary given the requirements of 5D1.3 of
20 the guidelines and the Sentencing Reform Act.

21 So, if an additional financial penalty, an amount of
22 community service, we believe those things are more reasonable
23 and appropriate for purposes of sentencing this defendant.

24 THE COURT: All right. All right. Thank you.

25 Mr. Werczberger, would you like to say anything?

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1 You're not required to speak, but you're invited to do so, if
2 you wish.

3 THE DEFENDANT: Can I say it from here?

4 THE COURT: You may.

5 THE DEFENDANT: Your Honor, speaking to you is one of
6 the hardest things I've ever done. Admitting my mistakes and
7 facing the harms that I've brought upon my family is painful in
8 a way I cannot describe.

9 Judge, I'm a family man. My pride and joy in this
10 world is being there for my wife --

11 THE COURT: Can he have a bottle of water?

12 THE DEFENDANT: My children, my grandchildren, and my
13 great grandchildren, I want to make sure that they know --

14 THE COURT: Do you want to take a moment?

15 THE DEFENDANT: The last thing I want is to have my
16 children and grandchildren worry about me but I know on this
17 case, I've caused everyone so much heartache. Every time I
18 speak to my family, I hear in their voices and I see in their
19 eyes that they're afraid of what's going to happen to me. We
20 can't be together, my children and grandchildren. The anxiety
21 over my futures, it's unbearable that my actions caused my
22 family such stress.

23 I spent a lot of time in my almost two years since my
24 arrest from my just worrying over how I could have made such a
25 stupid decision. I should have followed all of the rules more

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1 carefully and not jeopardized my family's happiness, not cast a
2 shadow on everything I've built over the last more than
3 50 years.

4 Your Honor, I worked very hard for what I have. As a
5 young man, I went through several health crisis, worked
6 multiple jobs that was physically draining and not paying much.
7 I spent careful years budgeting to support my family of three
8 beautiful children, providing the stable home and still repay
9 my debts that weighed on me for years. Finally, after working
10 hard for 20 years, I paid off all my debts. I struggled and
11 set up a new business, which is still thriving today without me
12 though.

13 Managing a successful business has its own challenges.
14 Finding ways to grow the business without taking too much debt
15 and risking everything and hiring the right employees who we
16 could trust fully. My business was my pride. Having good
17 credit, a stellar reputation, a stable company that supports my
18 family was what I worked for so many years.

19 Because of my mistakes and the crime I'm here for
20 today, my reputation is shattered. My credit is ruined. I've
21 had to give up my business I've worked decades to build because
22 my name and my crimes spoils everything I touch.

23 And the worst part is I know my children and
24 grandchildren and great grandchildren can't look up to me as a
25 role model. I can't tell my family that I hope they follow in

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1 my footsteps. I hope they don't. My mistakes, I failed them.
2 I failed myself and I'm sorry for that.

3 Thank you, your Honor, for listening.

4 THE COURT: All right. Thank you.

5 I'm just hope you'll bear with me for a couple of
6 minutes while I think about what I've heard today.

7 (Pause in proceedings)

8 THE COURT: Counsel, is there any reason why should
9 sentence should not be imposed at this time?

10 MR. MAZUREK: No, your Honor.

11 MR. WOLF: No, your Honor.

12 THE COURT: I am now going to describe the sentence
13 that I intend to impose. I will give the lawyers an
14 opportunity to make legal objections before the sentence is
15 actually imposed.

16 In imposing a sentence, I am required to consider the
17 factors that are set forth in 18, U.S.C., Section 3553(a).
18 These factors include: First, the nature and circumstances of
19 the offense and the history and characteristics of the
20 defendant; second, for the sentence imposed to advance the
21 purposes of sentencing, namely, to reflect the seriousness of
22 the offense, promote respect for the law, and to provide just
23 punishment for the offense, to afford adequate deterrence to
24 criminal conduct, to protect the public from further crimes of
25 the defendant, to provide the defendant with needed

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1 educational, vocational training, medical care, or other
2 correctional treatment in the most effective manner; third, I
3 must consider the kinds of sentences available; fourth, the
4 guidelines range; fifth, any pertinent policy statements;
5 sixth, the need to avoid unwarranted sentencing disparities;
6 and, seventh, the need to provide restitution to any victims of
7 the offense, although that factor is not applicable here.

8 I've considered the recommendation of probation and
9 the presentence report, the statements and submissions of
10 counsel, and the letters submitted in support of
11 Mr. Werczberger, including his own letter. I've also
12 considered all of the Section 3553(a) factors, which I just
13 recited. Ultimately, I am required to impose a sentence that
14 is sufficient but not greater than necessary to comply with the
15 sentencing purposes in the statute. With respect to the
16 guidelines I've already calculated the applicable range and we
17 have discussed it, so I will not go over that again. In short,
18 the range in this case is zero to six months' imprisonment. I
19 will also note that the Court is bound by a mandatory statutory
20 maximum of five years' imprisonment for this offense.

21 Against that backdrop, the defense requests a
22 noncustodial sentence of time served, had previously requested
23 supervised release of six months. Today, I believe Mr. Mazurek
24 said that the defense does not object to a two-year term of
25 supervised release.

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1 Is that correct?

2 MR. MAZUREK: Correct.

3 THE COURT: All right. The government, for its part,
4 seeks a guidelines sentence of time served along with two years
5 of supervised release, subject to a six-month condition of home
6 detention.

7 Probation recommends a sentence of time served and
8 two years of supervised release. The report does not speak to
9 any whether any portion of supervised release should consist of
10 home detention.

11 Mr. Werczberger, I have struggled a bit to understand
12 your case. Your counsel's thorough, detailed submission,
13 together with the letters sent by numerous family members and
14 friends portray you as a caring person, as a man of faith, as
15 the patriarch of your family, as a rock, someone who everyone
16 respect and relies on and as a highly successful businessman,
17 who has generously shared his wealth with family and friends in
18 need, with several charities, and has even built a synagogue,
19 the group that is assembled here today underscores all of that.
20 Your work, your generosity to charities and others, your
21 dedication to your family and your success in business make it
22 all the more confounding the turn that you took as you admitted
23 at your guilty plea hearing you agreed with another person in
24 November 2019 to represent to a bank that you were a president
25 of New York City Early Learning Company, although you knew you

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1 did not have that title, so that the bank would allow you to
2 open an account in the name of New York City Early Learning
3 Company. Additionally, you allocuted that you knew that was
4 wrong, that the information you provided was false, and that it
5 was provided for the purpose of influencing the actions at the
6 bank.

7 In addition, although I heard from your counsel some
8 points about regret relating to your betrayal of trust and the
9 conflict of interest position that you put yourself in as part
10 of committing the offense conduct, your own comments in your
11 letter to me focused almost exclusively on the impact of that
12 conduct on your family and yourself, not on the impact on the
13 victim in this case, ACF, and on the public. While it is not
14 unexpected for you to think about the toll on your family and
15 on yourself, I would have expected to hear an expression of
16 remorse for abusing the position of trust that you were put in.

17 With all of that in mind, I must impose a sentence
18 that reflects the seriousness of the offense, promotes respect
19 for the law, provides just punishment, deters you from
20 committing a crime like this again, and deters others from
21 committing this crime. I have done so while taking into
22 account some mitigating factors, including those acknowledged
23 by the government, that Mr. Werczberger is 72 years old, as
24 well as his relative culpability in this case. While these
25 factors do not neutralize Mr. Werczberger's criminal conduct,

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1 they are worthy of consideration.

2 With all of that said, I will state the sentence I
3 intend to impose. Mr. Werczberger, after considering the
4 factors set forth in Section 3553(a) of Title 18 of the United
5 States Code, I find that a sentence time served is sufficient
6 but not greater than necessary to comport with the purpose the
7 sentencing. I will order a term of two years of supervised
8 release to be completed. In order to reflect the seriousness
9 of the offense, to promote respect for the law, to provide just
10 punishment, and to afford adequate deterrence, I will order
11 that the first three months of supervised release be subject to
12 a condition of home detention. For those same reasons I will
13 also order a special condition of 100 hours of community
14 service, the specifics of which I will leave to the probation
15 department to recommend.

16 Now, there are a couple of important matters related
17 to home detention. Mr. Werczberger, while you are on home
18 detention, you will be permitted to attend medical
19 appointments, attend religious services, and attend to any
20 employment related tasks, among other important obligations.
21 This will all be worked out in consultation among you, your
22 attorneys, and your probation officer. In addition, consistent
23 with the practices in this district your home detention will be
24 enforced through what is called location monitoring so that
25 probation can ensure that you are where you are as needed.

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1 There are different types of devices that probation might
2 choose to use with respect to location monitoring. There is
3 location monitoring through GPS, through radio frequency, and
4 through a certain type of phone app. I'm not going to get into
5 the specifics each of those, that goes beyond the traditional
6 purview of the Court, but what I will say is this: While I
7 leave it within probation's discretion to determine the type of
8 location monitoring that can be used, under no circumstances
9 shall the form of location monitoring interfere in any way with
10 any religious holidays or observances during which the use of
11 electronics and the like are prohibited. That is to say, if,
12 for example, a certain form of location monitoring would
13 require that Mr. Werczberger charge the device in the middle of
14 a holiday during which charging devices and other use of
15 electronics is not allowed, then that form of location
16 monitoring is not to be used. Similarly, location monitoring
17 check-ins with probation should not be scheduled during any
18 hours in which Mr. Werczberger may be observing a holiday where
19 the use of electronics and other practices are not allowed.

20 I will note that what I have just stated is based on
21 information provided by and discussed with the probation
22 department. In addition, other Courts under similar
23 circumstances have made the necessary accommodations for
24 defendants on home detention and home incarceration for similar
25 reasons. See, for example, *United States v. Newman*. That's

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1 S.D.N.Y. Case No. Cr. 439, and *United States v. Nordlicht*,
2 E.D.N.Y. Case No. 16 Cr. 640.

3 I'm now going to read the remaining conditions of
4 supervised release that you must comply with along with other
5 details of your sentence: During your term of supervised
6 release you will be subject to the mandatory conditions set
7 forth on page 34 of the presentence report. Those can include
8 the following: You must not commit another federal, state, or
9 local crime. You must not unlawfully possess a controlled
10 substance. And you must cooperate in the collection of DNA as
11 directed by the probation officer.

12 As recommended by probation, I am waiving the
13 mandatory drug testing condition.

14 You must not make restitution as I will further
15 discuss with a moment.

16 In addition, the standard conditions of supervised
17 release shall apply. Those are listed on pages 35 to 36 of the
18 PSR and will be set forth in the judgment.

19 Would you like me to read the standard conditions to
20 you, Mr. Werczberger?

21 MR. MAZUREK: No. That's not necessary, your Honor.

22 THE COURT: All right. I do want to stress one
23 standard condition of supervision, and that is the following:
24 You must work full-time at least 30 hours per week at a lawful
25 type of employment unless the probation officer excuses you

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1 from doing so. I will, of course, leave it to probation to
2 determine whether you are excused from that condition, but I
3 will note for the record that Mr. Werczberger is retired and
4 has significant financial resources to continue to support
5 himself and any others who may depend on him. So, to the
6 extent probation deems it prudent to excuse Mr. Werczberger
7 from a mandated number of hours of employment, I support that
8 determination.

9 You must also meet special conditions of supervised
10 release that I will impose in addition to those that I have
11 already discussed. First, you must not incur new credit
12 charges or open additional lines of credit without the approval
13 of the probation officer unless you are in compliance with the
14 installment payment schedule. This condition is appropriate
15 given the nature of the crime to which you have been convicted.
16 Second, you must provide a probation officer with access to any
17 requested financial information. This is to ensure compliance
18 with any sentence regarding restitution. I'm going to
19 recommend that you be supervised by the district of residence
20 because you may be living in a district other than here in New
21 York. With respect to a fine, the guidelines range is, for an
22 offense level of 8, is \$2,000 to \$20,000. The parties' plea
23 agreement stipulates to an applicable fine range of \$1,000 to
24 \$9,500.

25 I note, Mr. Werczberger, that you completed a

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1 financial affidavit as reflected in paragraphs 80 to 86 of the
2 presentence report. Based on the information available to me,
3 I conclude that you have not demonstrated an inability to remit
4 a fine.

5 The probation department recommended that I impose a
6 fine of \$15,000. The government, as previously noted, has
7 urged that I impose a fine at the high end of the parties'
8 stipulated guidelines range, a fine of \$9,500. I find that a
9 fine is appropriate under the circumstances. The defense
10 clarified today that it does not object to a fine that exceeds
11 the top of the range reflected in the parties' plea agreement.
12 I am imposing a fine at the top of the guidelines range for an
13 offense level of 8, which is \$20,000.

14 Now, we come to restitution. The government has
15 handed me a fully executed proposed order of restitution, which
16 I will sign and docket at the conclusion of this proceeding.
17 Additionally, I must impose a mandatory special assessment of
18 \$100, which shall be due and payable immediately.

19 Does either counsel know of any legal reason other
20 than anything we have already discussed as to why the sentence
21 should not be imposed as stated?

22 MR. WOLF: No, your Honor.

23 MR. MAZUREK: Your Honor, I just have a couple of
24 requests: Understanding that the three months' home detention
25 must be completed within the two years of supervised release,

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1 we respectfully do request, if the Court is amenable, if we
2 could delay the period of three months' home detention until
3 November 1st for a number -- a couple of reasons: First,
4 Mr. Werczberger has a knee replacement surgery scheduled for
5 September 24th, and just for the purposes of maximum
6 flexibility, and less, you know, I guess, coordination with
7 probation, and, secondly, because of the religious holidays are
8 in the month of October this year, for Rosh HaShanah and Yom
9 Kippur and Succoth, that would give Mr. Werczberger again the
10 maximum flexibility of going to different family members' homes
11 during those religious holidays, again, without having to go
12 through, you know, complicated, potentially, schedule --
13 complicated scheduling with probation for home detention. So
14 we do ask if the Court would consider to start his period of
15 home detention on November 1st of this year.

16 And then we would ask that the residency that he would
17 take up for this period would be his residence in Florida, so
18 we would ask that he be supervised by the Southern District of
19 Florida.

20 THE COURT: All right. Mr. Wolf, any response to
21 that?

22 MR. WOLF: Just give me a moment to confer.

23 THE COURT: Yes.

24 (Counsel confer)

25 MR. WOLF: Your Honor, we would leave it to the

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1 discretion of the Court. We've conferred with probation. The
2 government is in agreement with probation that, as a practical
3 matter, I think that the standard practice would be for the
4 defendant to begin his term of home detention immediately after
5 the sentence is imposed. We're unaware of any legal reason why
6 that must be the case. And so with that, we defer to the
7 Court's discretion.

8 THE COURT: Okay. Thank you. That had been my
9 intention. But for the medical and religious reasons that
10 Mr. Mazurek has cited, I will allow it. Mr. Werczberger may
11 commence his period of home detention on November 1, 2024.

12 MR. MAZUREK: Thank you, your Honor.

13 THE COURT: Mr. Werczberger, for the reasons I
14 previously stated, it is the judgment of this Court that you be
15 sentenced to time served and two years' supervised release.
16 Your term of supervised release will be subject to the
17 mandatory, standard, and special conditions I described. You
18 are ordered to pay a fine of \$20,000 and a special assessment
19 of \$100.

20 Before we adjourn, Mr. Wolf, are there any open
21 counts?

22 MR. WOLF: Yes, your Honor. And the government
23 respectfully requests they be dismissed.

24 THE COURT: Okay.

25 MR. MAZUREK: We join in that application.

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1 THE COURT: All right. I will dismiss the open
2 counts.

3 Mr. Werczberger, I advise you that you have the right
4 to appeal from the judgment imposing this sentence to the
5 extent you haven't waived it. If you are unable to pay the
6 costs of an appeal, you may apply for leave to appeal *in forma*
7 *pauperis*. If that application were granted, you would be
8 permitted to appeal without the payment of any fees. The
9 notice of appeal must be filed within 14 days of the judgment
10 of conviction.

11 Mr. Wolf, is there anything else we should discuss
12 today?

13 MR. WOLF: No, your Honor. Thank you.

14 THE COURT: All right. Mr. Mazurek, anything else?

15 MR. MAZUREK: No. Thank you, your Honor.

16 THE COURT: All right. Thank you all. So,
17 Ms. Haramati and Mr. Mazurek, I wish you well.

18 We're adjourned.

19 THE DEPUTY CLERK: All rise.

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